

FILED

JUL 21 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CERVANDO DUARTE-BENITEZ,

Defendant - Appellant.

No. 05-50798

D.C. No. CR-04-00279-AHS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Alicemarie H. Stotler, District Judge, Presiding

Submitted July 17, 2006^{**}

Before: B. FLETCHER, HAWKINS and THOMAS, Circuit Judges.

We have reviewed appellant's opening brief and opposition to the government's motion for summary affirmance and find that the questions raised in this appeal are so insubstantial as not to require further argument. *See United*

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

05-50798

States v. Hooton, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). The United States Supreme Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), remains binding on this court until the Court overrules it. See *United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that this court remains bound by the U.S. Supreme Court's holding in *Almendarez-Torres* that a district court judge may enhance a sentence on the basis of prior convictions, even if the fact of those convictions was not found by a jury beyond a reasonable doubt). Further, we upheld the identical condition of supervised release challenged here in *United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 772-73 (9th Cir. 2006).

Accordingly, the government's motion for summary affirmance of the district court's judgment is granted.

AFFIRMED.